IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 193 OF 1996

Sarjerao Ramchandra Bhakare .. Appellant

vs

State of Maharashtra .. Respondent

Mr.Ganesh Gole i.b Mr.A.P.Mundargi for Appellant
Ms.V.R.Bhonsale A.P.P.for Respondent

CORAM : SMT.RANJANA DESAI, J

DATED : 12th September, 2007

ORAL JUDGMENT

1. The appellant is original accused no.1 in Sessions case No.62 of 1991 which was tried in the Court of the Additional Sessions Judge, Kolhapur. The appellant was tried along with three other accused. The other accused are original accused nos. 2,3 and 4. For the sake of convenience, I shall refer to the appellant and the other accused as per their description in the trial.

2. The accused were charged for the offence punishable under section 307 read with section 34 the IPC in the alternative under section 307 simplicitor of the IPC. The accused were further charged under section 326 read with section 34 of the IPC in the alternative under section 326 the IPC simplicitor.

3. At the trial, the case of the prosecution was as under :

PW 4 Jagannath wanted to install a gobar gas plant behind the house of the accused. The accused objected to it. On 22nd December, 1990 at about 6 p.m. Jagannath and Rajaram returned to their village from Kodoli and were sitting near Benor office. Accused no.1 Sarjerao came there with a chopper,. Other accused also came there with axes. Accused no.1 Sarjerao dealt a blow with a chopper on the neck of Jagannath. Accused no.3 Rajaram and accused no.4 Arjun dealt axe blow on the head and arm of Jagannath respectively. Rajaram tried to intervene. Accused no.2 attacked with a stick on his left hand. The accused ran away. Jagannath and Rajaram were taken to the Rural Hospital, Kodoli. PW 6 Dr.Thorat examined them and referred them to CPR Hospital, Kolhapur. PW 7 Dr.Tiwale examined them. He found incised wounds on the persons of Jagannath and Rajaram. PW 5 ASI Mane received letter Exhibit 36 from the doctor. He went to Rural Hospital and recorded his report which is at Exhibit 24. He sent the report Exhibit 24 with his letter Exhibit 37 to Police Station, Kodoli through Laxmipuri police station. PSI I.B. Patil who was at that time incharge of Police Station, Kodoli came to Kolhapur. He collected report Exhibit 24 He registered offence at C.R.No.62 of 1991 at Police Station, Kodoli. The investigation was set into motion. After completing of the investigation, the accused came to be charged as aforesaid.

4. In support of its case, the prosecution

examined as many as 8 witnesses. The prosecution heavily relied on the evidence of PW 4 Jagannath the injured witness. The prosecution also relied on the evidence of PW 1 Rajaram, PW 6 Dr.Thorat and PW 7 Dr.Tiwale. The details of the investigation have been given by PW 8 PSI. I.B.Patil.

5. The accused denied the prosecution case. According to the accused, prosecution witnesses were the aggressors. According to the accused, they suspected that Jagannath had illicit relations with Hausabai wife of accused no.4 Arjun. They therefore, asked her not to go to his field for work. Therefore, she stopped going there. Four days prior to 22nd December, 1990 Jagannath asked Hausabai as to why she had gone to the field of others. He then dislodged the bundle of grass which was on her head and assaulted her. She narrated this to accused no.1 Sarjerao. Sarjerao went to the house of Jagannath and asked him as to why he did so. Jagannath abused him and asked him to go away. Sarjerao went away. At the time of the incident, Sarjerao saw Jagannath, Dada Jadhav sitting near Benor office. All of them assaulted him with choppers, axe and sticks. He fell down. He was taken to the hospital by his wife.

6. After perusing the evidence on record, the learned Judge was of the view that the prosecution had failed to prove its case as against accused nos. 2 to 4. He therefore, acquitted them of all the offences. The learned Sessions Judge however,

found accused no.1 Sarjerao guilty of the offence under section 326 IPC. He sentenced him to undergo R.I. for two years and to pay a fine of Rs.500/- in default to undergo R.I. for further period of four months.

7. Being aggrieved by this judgment and order, accused no.1 herein has preferred this appeal.

8. I have heard Mr.Ganesh Gole, learned counsel for ccused no.1 at some length. He submitted that the learned Sessions Judge erred in convicting the accused on the interested evidence of PW 1 and 4. He submitted that the evidence of PW 1 and 4 does not inspire confidence. It is replete with many contradictions and inconsistencies. These witnesses are not consistent as regards the spot of the incident and as to the manner in which the alleged assault was made. He drew my attention to the evidence of PW 7 Dr. Tiwale and pointed out that Dr.Tiwale has said that injury no.1 found on Jagannath cannot be caused if the injured was sitting facing east and the assailant had dealt blow by chopper from his back from right side. Mr. Gole submitted that therefore, the prosecution story that Jagannath was attacked with chopper from back is not truthful. The learned counsel submitted that PW 1 and PW 4 have shown ignorance about the injuries suffered by accused no.1. There is no dispute that accused no.1 had suffered grievous injuries. The prosecution has not explained the injuries sustained by the accused.

In this connection, he relied on the judgment of the Supreme Court in Lakshmi Singh vs State of Bihar AIR 1976 SC 2263. The learned counsel submitted that therefore, adverse inference needs to be drawn against the prosecution. The prosecution has suppressed the genesis of the case and therefore the accused should be acquitted.

9. Mr.Gole further submitted that the learned Sessions Judge has acquitted accused nos. 2 to 4. Therefore, the learned Sessions Judge has not accepted the evidence of prosecution witness so far as it pertains to accused nos.2 to 4. There is therefore, no guarantee that prosecution witnesses are telling the truth as far as their case against accused no.1 is concerned. Possibility of false implication cannot be ruled out. Learned counsel urged that therefore the impugned judgment and order needs to be quashed and set aside.

10. As against this, Ms.Bhosale, the learned A.P.P. submitted that no interference is necessary with the impugned judgment and order. She submitted that the prosecution case is borne out by the evidence of the injured witnesses. Evidence of PW 4 Jagannath is supported by the evidence of PW 1 Rajaram. It is also supported by the medical evidence. The learned Judge has rightly convicted the accused. She submitted that therefore the present appeal be dismissed.

11. It must be stated at the outset that that in

respect of the incident in question, a counter case was registered on the same day and PW 1 Rajaram, PW 4 Jagannath and one Dada Jadhav were tried in Sessions case No.146 of 1995 for the offence punishable under section 326 read with section 34 of the IPC. Jagannath More and Dada Jadhav were acquitted. But the Sessions Judge convicted accused no. 2 Rajaram under section 324 of the IPC and sentenced him to suffer R.I. for 2 years and to pay a fine of Rs.500/- in default to undergo R.I. for four months. The appeal preferred by Rajaram More has been allowed by this Court and Rajaram More has been acquitted by giving him the benefit of doubt.

12. PW 6 Dr.A.K.Thorat was at the relevant time attached to Rural Hospital, Kodoli. He has stated that on 22nd December, 1990 at about 7.30 p.m. he examined PW 4 Jagannath. He found the following injuries on Jagannath :

1. At the level of CO vertibra on posterior aspect of the neck of the size 13 x 2 x 3 cms deep starting from 2 cms to the right of the midline and going towards left side of the neck.

2. 7 cms x 1 cm x 1 cm on the ventral aspect of the right wrist on the lower end or radio ulnar joint.

3. 2 cm x 1 cm x 1 cm on the root of the right thumb in the line of injury no.2 but 1 cm.

4. 5 cms x 1/2 cm x 1/2 cm of sagital suture over frontal bone.

He also examined Rajaram. He found the following injuries on Rajaram :

1. 3 cm x 1 cm x 1 cm on the index finger at terminal phalyns and 2nd phalynx with

suspected fracture of the phhalangial bones of the finger.

2. 3 cm x 1 cm x 1 cm over distal phyalynx of middle finger with suspected fracture of the

He has stated that injury no.1 was dangerous to life.

In his cross examination, he has stated that all the injuries received by Jagannath were grievous injuries. He had also examined accused no.1 Sarjerao. He found the following injuries on Sarjerao :

1. Incised injury on right scapula with size 3 x 1 x 1 " suspected fracture of scapula bone.

2. 3 contused lacerated wounds on right eye brow 2 horizontal and one vertical on the lateral and size each 2 cm x 1/2 x 1/2 cm.

3. Incised wound of about 1 cm x 1/2 on left ear lobule upper side over tragus.

4. Incised injury 3 x 1/2 cm superficial over left supra scapular fossa.

5. CLW on left lateral eye brow size 1 1/2 cm x 1/2 superficial circular in shape.

He has stated that injury nos. 1,3 and 4 were dangerous to life and could be caused by chopper article no.1.

13. PW 7 Dr.Milind Tiwale was at the relevant time attached to C.P.R.Hospital, Kolhapur. On 22nd December, 1990 he examined PW 4 Jagannath and found the following injuries on Jagannath:

1. Cut incised wound 6 " x 1 " x 2" on posterior aspect of neck up to left angle of mandible muscle deep.

2. Cut incised wound 4 x 2 x 1 cm on right wrist muscle deep.

3. Cut incised wound 3 x 1 cm on inner aspect of right hand muscle deep.

4. Cut incised wound on centre of the frontal bone 4 x 1 cm.

He has stated that the injuries were caused by a sharp object and they were dangerous to life. He has stated that he had also examined Rajaram and he found the following injuries on Rajaram :

1. Cut incised wound over dorsal aspect of left index finger 4 x 1 x 1 cm.

2. Cut incised wound over dorsal aspct of left middle finger 4 x 1 x 1 cm.

He has stated that the said injuries could be caused by a sharp object. He had also examined Sarjerao. He found the following injuries on Sarjerao.

1. Cut incised wound 7x 3 cm on right scapular region muscle deep.

2. Cut incised wound 2 x 1/2 cm on right shoulder.

3. Cut incised wound 2 x 1/2 cms above right eye brow.

4. Cut through injury to the left ear 2 x 1 cm.

14. From the medical evidence, it is clear that persons from both sides had received injuries and injuries were serious. Therefore, some incident did take place on 22nd December, 1990.

15. The prosecution story is unfolded by the evidences of PW 1 Rajaram and PW 4 Jagannath. PW 1 Rajaram has stated that Jagannath wanted to install a gobar gas plant. Sarjerao and other accused asked him not to install the gobar gas plant. On 22nd December, 1990 at 6 p.m. he and Jagannath came to Satav. They had to contract labourers for giving contract for excavating the pit. Accused no.1 Sarjerao came there with a chopper. He

assaulted on the neck of Jagannath with a chopper. Accused nos. 2,3 and 4 came there with axes. Accused no.3 assaulted on the head of Jagannath with an axe. Accused no.4 Arjun assaulted on the right hand and forearm of Jagannath with an axe. Accused no.2 Shivaji gave an axe blow on the finger of Rajaram's left hand. Thereafter, all the accused ran away. Thereafter, he and Jagannath were taken to hospital.

16. In the cross examination, he has stated that he and Jagannath were sitting on the steps of Benor office. All the accused were present at some distance from the office. He and Jagannath were facing east. Accused no.3 was at a distance of 20 feet from there. On seeing the accused, they did not rise. According to him, accused no.1 assaulted on the back of Jagannath with chopper. Jagannath was sitting on his left side. When he was asked whether on his return from Kodoli, he and Jagannath went to their house, he stated that they did not go to their house. His attention was drawn to his supplementary statement where he had stated that they did go to their house before the incident. He appears to be anxious to avoid any suggestion that they went home to collect weapons.

17. PW 4 Jagannath has stated that two days prior to the date of incident he was installing gobar gas plant behind the house of the accused. Accused came there and told him not to dig. He has further stated that on 22nd December, 1990 he and PW 1

Rajaram had gone to Kodoli in connection with marriage of his daughter. They returned by about 5.30 p.m. or 5.45 p.m. They were sitting at a distance of 15 feet from Benor office. Accused no.1 Sarjerao came from the back to his left side. He dealt a blow with a chopper on left side of his neck. Accused no.4 Arjun dealt an axe blow on his right hand and accused no.3 gave an axe blow on his head. Accused no.2 Shivaji dealt a blow on the fingers of Rajaram. According to him he became unconscious.

18. In his cross examination, he has stated that at the relevant time, when the incident took place he was sitting on the ground about 15 feet away from Benor office alongwith Rajaram. The accused came there. Accused no.1 asked him as to why he wanted to make a pit for gobar gas plant. He immediately started assaulting him. Accused no.1 attacked him with a chopper from his right side to left side, while he was standing to his left. An ommission has been brought on record that he did not state before the police that accused no. 4 assaulted him on his right hand and wrist. He has not stated before the police that accused no. 3 gave an axe blow on his head. He has further stated that at that time he did not see that accused no.1 Sarjerao was injured and he had a bleeding head injury. He did not see accused no.1 lying there in an injured condition.

19. It must be remembered that the trial court has

found that the evidence of both these witnesses is not worthy of credence in so far as the alleged involvement of accused nos. 2, 3 and 4 is concerned. Therefore, this Court will have to be circumspect while accepting their testimony as regards involvement of accused no.1. Though they are injured, it must be examined whether they have given an exaggerated account as regards alleged role played by accused no.1

20. So far as the incident dated 22nd December, 1990 is concerned, there are descrepencies in their evidence. PW 1 Rajaram does not say that accused no.1 had any talk with PW 4 Jagannath whereas PW 4 Jagannath has said that accused no.1 did talk to him. While PW 1 Rajaram says that they were sitting on the steps of Benor office, PW 4 Jagannath states that they were sitting on the ground about 15 feet away from Benor office and not on the steps of Benor office. While PW 1 Rajaram says that the accused came from front side and accused no.1 gave blow with a chopper from the back of Jagannath, PW 4 Jagannath does not say that the accused came from front side. He says that accused no.1 came from back and remaining accused came from his right side. Whereas PW 1 states that accused no.1 assulted them when they were sitting PW 4 Jagannath has stated that he received a blow on his neck when he was sitting and he received other two blows when he was in a standing position. PW 7 Dr.Tiwale has stated that the incised injury received by Jagannath on his neck cannot be caused

if he was sitting facing east and chopper blow was dealt from his back from right side. Therefore, the evidence of P W 1 and 4 is not consistent with medical evidence. It is true that eye witness account overrides the medical evidence. However, in the peculiar facts and circumstances of the case, in my opinion this variances assumes importance because eye witness account is not of sterling quality.

21. PW 1 and PW 4 are undoubtedly interested witnesses. There is no independent evidence adduced in this case. Credibility of these witnesses is suspect because accused no.1 Sarjerao had received serious injuries. They feign ignorance about those injuries.

22. I have already stated that PW 1 Rajaram has categorically stated he did not notice any bleeding injuries on the person of accused no.1. Similarly, PW 4 Jagannath has stated that he did not see any bleeding head injury received by accused no.1. He has stated that he did not see accused no.1 lying in an injured condition. PW 6 Dr.Thorat has stated that Sarjerao has received 5 injuries. The certificate issued by Dr.Thorat in respect of the injuries suffered by Sarjerao is on record. It is at Exhibit 43. Dr.Thorat has stated that injuries 1,3 and 4 were dangerous to life. It is inconceivable therefore that PW 1 Rajaram and PW 4 Jagannath would not have seen accused no.1 Sarjerao receiving injuries and lying in an injured

condition. The prosecution has not offered any explanation about the serious injuries suffered by Sarjerao.

In this connection, reliance is placed by Mr.Gole, learned counsel for the accused on the judgment of the Supreme Court in Lakshmi Singh's case supra. In that case, the Supreme Court has held that if the prosecution does not explain the injuries on the person of the accused received at about the time of occurence, or in the course of altercation, three inferences can be drawn which are as under :

(a) That the prosecution has sup-presed the genesis and the original of the occurrence and has thus not presented the true version ;

(b) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable.

(c) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

23. Inasmuch as the prosecution witnesses have not explained the injuries caused to the accused and in fact gone on to state that they did not notice them their evidence becomes suspect. It is possible that they are suppressing the genesis of the case. The true facts have perhaps not been unfolded by the prosecution witnesses.

24. It is pertinent to note that no weapon was seized from the accused. At the time of spot

inspection, chopper article no.1 was found at some distance from the spot. The clothes were seized. But, the learned Judge has observed that there is no evidence as regards blood stains. There is also no acceptable evidence to establish that the seized articles were sealed. The Chemical Analyser's report therefore cannot be used against the accused. In any case, the Chemical Analyser's report Exhibit 58 shows that blood group of PW 4 Jagannath is A and the chopper article 1 had stains of human blood of O group. Assuming therefore, that chopper article no.1 was used, it cannot be said that it was used for assaulting Jagannath.

25. It appears that the accused has taken a plea of right of private defence of his person. It is established that some incident did take place between two sides. It is not clear as to who assaulted first. But, in the facts of this case, it is not necessary for me to go into that aspect of the matter. I am of the opinion that PW 1 and PW 4 have not proved the prosecution case beyond reasonable doubt. They have suppressed the genesis of the case. No doubt, they are injured witness but the fact remains that their evidence as regards accused nos. 2 to 4 has been discarded by the learned Sessions Judge. In my opinion, their evidence as regards accused no.1 is shaky and inconsistent. In the facts of this case, false involvement cannot be ruled out. In anycase the appellant accused must get benefit of doubt. I am therefore of the opinion that the conviction and

sentence of accused no.1 deserves to be quashed and

set aside.

Hence, the following order :

The conviction of accused Sarjerao Ramchandra Bhakare under section 326 of IPC and his sentence to undergo R.I. for 2 years and to pay a fine of Rs.500/- in default to undergo R.I. for further period of 4 months under the judgment and order dated 2nd March, 1996 passed by the Additional Sessions Judge, Kolhapur in Sessions case No.62 of 1991 is quashed and set aside. The accused is on bail. He need not surrender. His bail bonds stand cancelled.

Appeal allowed.

(Smt Ranjana Desai, J)

Rider

It is also pertinent tonote that PW 8 PSI Patil has recorded the supplementary statement of PW 3 Sarjerao. In his evidence, PSI Patil has stated that portion marked A in the statement of Sarjerao who in his cross examination has been correctly recorded. In this portion marked A of the supplementary statement, he has stated that his statement that Jagannath More assaulted with axe and Krishna and Dada Jadhav assaulted with sticks is false.